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September 25, 2009

Sharon Gillett
Chief, Wireline Competition Bureau
Federal Communications Commission
445 12th Street, SW
Washington DC 20554

Re: Google Voice; *Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Docket No. 07-135; *Broadband Industry Practices*, 07-52

Dear Ms. Gillett:

AT&T has long supported both the goal of a vibrant, open Internet and the four principles contained in the Commission's *Internet Policy Statement*. One of those principles, the fourth, is designed to ensure that consumers reap the benefits of competition among providers of networks, applications, services and content. As President Obama explained earlier this week, the fundamental purpose of the Commission's *Internet Policy Statement* is to "ensure there's a level playing field" between competitors.¹

This vision is apparently not shared by one of the most noisome trumpeters of so-called "net neutrality" regulation, Google, at least when it comes to its own services. Numerous press reports indicate that Google is systematically blocking telephone calls from consumers that use Google Voice to call telephone numbers in certain rural communities.² By blocking these calls, Google is able to reduce its access expenses. Other providers, including those with which Google Voice competes, are banned from call blocking because in June 2007, the Wireline Competition Bureau emphatically declared that all carriers are *prohibited* from pursuing "self help actions such as call blocking." The Bureau expressed concern that call blocking "may degrade the reliability of the nation's telecommunications network."³ Google Voice thus has claimed for itself a significant advantage over providers offering competing services.

¹ *Remarks by the President on Innovation and Sustainable Growth*, Troy, New York (Sept. 21, 2009), available at http://www.whitehouse.gov/the_press_office/Remarks-by-the-President-on-Innovation-and-Sustainable-Growth-at-Hudson-Valley-Community-College/.

² *Google's New Phone Service Poses Questions for Regulators*, Wall Street Journal (Sept. 18, 2009) (*WSJ Article*); *The intellectual contradiction of Google Voice*, Financial Times (Sept. 22, 2009) (*FT Article*); *Google Says Apple Rejected Google Voice Application in July*, Communications Daily (Sept. 21, 2009).

³ *Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Docket No. 07-135, Declaratory Ruling and Order, DA 07-2863, ¶¶ 1, 5 (WCB June 28, 2007).

Google casually dismisses the Bureau's Order, claiming that Google Voice "isn't a traditional phone service and shouldn't be regulated like other common carriers."⁴ But in reality, "Google Voice" appears to be nothing more than a creatively packaged assortment of services that are already quite familiar to the Commission. Among other things, Google Voice includes a calling platform that offers unified communications capabilities and a domestic/international audio bridging telecommunications service that, with the assistance of a local exchange carrier known as Bandwidth.com, provides the IP-in-the-middle connection for calls between traditional landline and/or wireless telephones.⁵ As such, Google Voice would appear to be subject to the same call blocking prohibition applicable to providers of other telecommunications services.⁶ For its part, Bandwidth.com is undeniably a common carrier subject to the Commission's call blocking prohibition; it markets itself as a "National CLEC" and has certified to the Commission that it operates as a local exchange carrier.⁷

But even if Google Voice is instead an "Internet application," Google would still be subject to the Commission's *Internet Policy Statement*, whose fourth principle states that "consumers are entitled to competition among network providers, *application* and service

⁴ *WSJ Article*.

⁵ See Google Voice website at <http://www.google.com/support/voice/bin/answer.py?hl=en&answer=115073> (unified communications capabilities); <http://www.google.com/support/voice/bin/answer.py?hl=en&answer=115079> (instructions for making calls); <http://www.google.com/support/voice/bin/answer.py?hl=en&answer=141922> (international calling features); <http://www.google.com/support/voice/bin/answer.py?hl=en&answer=141925> (international calling rates); <http://www.google.com/support/voice/bin/answer.py?hl=en&answer=115119> ("Google Voice works with regulated telephone carriers to connect your phone calls."); <http://www.google.com/support/forum/p/voice/thread?tid=7cd09d194631ae4a&hl=en> (messages from Google Voice users identifying Bandwidth.com as carrier for Google Voice traffic and describing complaints about blocked calls). See also *Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services are Exempt From Access Charges*, Order, 19 FCC Rcd 7457 (2004) (classifying IP-in-the-middle long distance as a telecommunications service); *Regulation of Prepaid Calling Card Services*, Declaratory Ruling and Report and Order, 21 FCC Rcd 7290 (2006) (classifying enhanced prepaid calling cards as telecommunications services); *Request for Review by InterCall, Inc. of Decision of Universal Service Administrator*, Order, 23 FCC Rcd 10731 (2008) (classifying audio bridging services as telecommunications services).

⁶ Google's provision of Google Voice also raises significant questions about Google's compliance with other regulatory obligations, such as the Commission's rules for the handling of customer proprietary network information (CPNI). See, e.g., *Google's Free Phone Manager Could Threaten A Variety of Services*, New York Times (March 12, 2009) (describing the Electronic Privacy Information Center's concerns that Google Voice evinces the "increased profiling and tracking of users without safeguards" and the "growing consolidation of Internet-based services around one dominant company"); Letter from Catherine Novelli, Apple, to Ruth Milkman, FCC, Attachment at 2 (Aug. 21, 2009) (describing concerns about Google Voice transferring a consumer's contact list from a handset to Google's servers).

⁷ See Bandwidth.com website at <http://www.bandwidth.com/about/>; Bandwidth.com's FCC Form 499 data at <http://fjallfoss.fcc.gov/cgb/form499/499detail.cfm?FilerNum=827083>.

providers, and content providers.”⁸ This fourth principle cannot fairly be read to embrace competition in which one provider unilaterally appropriates to itself regulatory advantages over its competitors. By openly flaunting the call blocking prohibition that applies to its competitors, Google is acting in a manner inconsistent with the fourth principle.

Ironically, Google is also flouting the so-called “fifth principle of non-discrimination” for which Google has so fervently advocated. According to Google, non-discrimination ensures that a provider “cannot block fair access” to another provider.⁹ But that is *exactly* what Google is doing when it blocks calls that Google Voice customers make to telephone numbers associated with certain local exchange carriers. The Financial Times aptly recognized this fundamental flaw in Google’s position: “network neutrality is similar to common carriage because it enforces non-discrimination . . . Google is arguing for others to be bound by network neutrality and, on the other hand arguing against itself being bound by common carriage,” which leaves Google with an “intellectual contradiction” in its argument.¹⁰

This intellectual contradiction, moreover, highlights the fallacy of any approach to Internet regulation that focuses myopically on network providers, but not application, service, and content providers. To the extent “net neutrality” is animated by a concern about ostensible Internet “gatekeepers,” that concern must necessarily apply to application, service, and content providers that, like Google, can exercise their power to control which websites consumers will see and which consumers’ calls will be blocked.¹¹ Indeed, even leading net neutrality proponent

⁸ *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, CC Docket No. 02-33, Policy Statement, FCC 05-151, ¶ 4 (Sept. 23, 2005) (Internet Policy Statement) (emphasis added). See also *Petition for Declaratory Ruling that pulver.com’s Free World Dialup is Neither Telecommunications Nor a Telecommunications Service*, WC Docket No. 03-45, Memorandum Opinion and Order, FCC 04-27, ¶¶ 14, 26 (Feb. 19, 2004) (declaring Pulver’s Free World Dialup service “subject to the Commission’s jurisdiction” even though “Pulver does not offer transmission to its members”); *id.* ¶ 14 (“The Commission has never required or even suggested that the information service provider must be the entity that provides or offers the telecommunications over which the information service is made available to its members.”).

⁹ *FCC announces plan to protect access to an open Internet*, Google Policy Blog (Sept. 2009), available at <http://googlepublicpolicy.blogspot.com/>.

¹⁰ See *supra* FT Article.

¹¹ *Compare Preserving a Free and Open Internet: A Platform for Innovation, Opportunity, and Prosperity*, Prepared Remarks of Chairman Julius Genachowski, FCC, at 5 (Sept. 21, 2009) (reducing the FCC’s four Internet principles to two restrictions applicable only to “network operators”); *Internet Policy Statement* ¶ 4 (describing four separate principles as consumer entitlements rather than restrictions; stating that “consumers are entitled to competition among network providers, application and service providers, and content providers”) (emphasis added). See *Google bans anti-MoveOn.org ads*, Examiner.com (Oct. 11, 2007) (Google blocked political advertisements by Senator Susan Collins that criticized MoveOn.org, which has joined Google in supporting an aggressive net neutrality agenda); *Google Web Search: Do No Evil?*, Multichannel Newsday (June 12, 2006) (“Google’s top Washington lobbyist disclosed [in 2006] that the company had configured its search engine to return paid links that support Google’s position on net neutrality after the entry of certain key words.”); *Google E-Mail Highlights Division Over Net Neutrality*, Technology Daily PM (June 13, 2006) (Google admitted that it “participated in its own

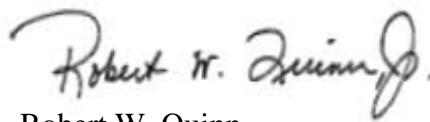
Timothy Wu has suggested a possible need for preemptive regulations to “block discrimination by powerful applications providers.”¹²

AT&T strongly emphasizes that the existing Internet principles are serving consumers well in their current form and there is no sound reason to radically expand and codify those principles. But if the Commission nonetheless embarks on such a course as it apparently plans to do in an upcoming rulemaking, it absolutely must ensure that any such rules apply evenly – not just to network operators but also to providers of Internet applications, content and services. Anything less would be ineffective, legally suspect and, in all events, a direct repudiation of President Obama’s call for a “level playing field.”

* * *

AT&T urges the Commission to end, once and for all, the patently unlawful “traffic pumping” schemes that drive carriers to block calls in the first place. There are several sound proposals and copious data in the record that provide a basis for expeditious action. For example, the joint compromise proposal submitted by AT&T and the Rural Independent Competitive Alliance (RICA) would address the traffic pumping problems created by the few carriers gaming the system without unduly impacting other carriers competing in good faith.¹³ But regardless of how the Commission ultimately addresses traffic pumping, the Commission cannot, through inaction or otherwise, give Google a special privilege to play by its own rules while the rest of the industry, including those who compete with Google, must instead adhere to Commission regulations. We urge the Commission to level the playing field and order Google to play by the same rules as its competitors.

Sincerely,



Robert W. Quinn

cc: Chairman Julius Genachowski
Commissioner Michael J. Copps
Commissioner Robert M. McDowell
Commissioner Mignon Clyburn
Commissioner Meredith Attwell Baker

auction for the keywords ‘net neutrality’ and that if opponents of the concept wanted their ads to appear higher in sponsored Internet search results, they could have decided to pay more.”).

¹² Timothy Wu, *Why Have a Telecommunications Law? Anti-Discrimination Norms in Communications*, 5 J. Telecomm. & High Tech. L. 15, 46 (2006).

¹³ See Joint Letter from Brian Benison, AT&T, and Steve Kraskin, RICA, to Marlene Dortch, FCC, WC Docket No. 07-135 (Nov. 25, 2008).